



HB 4419-4420

Criminal Defense Attorneys of Michigan

OFFICERS

Patricia A. Maceroni,
President
Elizabeth LaCosse,
1st Vice President
Karl Numinen,
2nd Vice President
Rhonda Ives, Treasurer
Nicole L. Smith,
Secretary
Penny R. Beardslee
Past President

BOARD MEMBERS

Michael Bartish, District 3
Joshua Blanchard
Stacia Buchanan, District 2
Lynn D'Orio
Robyn Frankel
Stuart G. Friedman
Daniel Grow
Keeley Heath, District 2
Thomas M. Loeb
Harry Mihas
Marla McCowan
Steven I. Moss
Michael Naughton, District 3
Charlotte Steffen-Ramirez
Michael L. Steinberg
William W. Swor, District 1
Dawn Van Hoek, District 1
Rafael Villarruel

EXECUTIVE DIRECTOR

Ramona L. Sain

Mailing Address

P.O. Box 279
Davison, MI 48423

517.579.0533 office
www.CDAMonline.org

Michigan's "felony firearm statute, MCL 750.227b, makes it a felony for a person to possess a firearm "when he or she commits or attempts to commit" another felony. At present, "felony firearm" is punished by a flat 2-year prison sentence, to be served first, and consecutively to, the punishment imposed for the other felony. HB 4419 would modify the felony-firearm penalty, permitting the judge to sentence a first-time felony-firearm offender "for not more than 3 years" and removing the mandatory consecutive nature of the punishment.

CDAM understands that the intent of the legislation is to provide for felony-firearm sentencing pursuant to Michigan's sentencing guidelines. Under HB 4420 this offense would fall within the "F" grid of those guidelines, which is appropriate for a first-time offender. This means that, instead of prison, an offender could be sentenced to probation, with or without a concurrent jail term, if the guidelines called for such a sentence.

CDAM supports HB 4419 and 4420. First, "flat" sentences of incarceration give judges zero leeway to tailor appropriate punishment to the offender in a given case. In this respect "flat" sentences are like mandatory minimum sentences in that the punishment imposed is cookie-cutter rather than individualized. In our view, the better policy is to leave it to the sentencing guidelines and the judge's sound discretion to determine what is the appropriate punishment for felony-firearm.

Second, the current statute produces too many unintended and unjust consequences. Oftentimes the underlying felony in a case where felony-firearm is charged is an offense for which probation would ordinarily be given. For instance, a person may steal a car from a parking lot while in possession of a handgun. Or a person may be selling marijuana out of his backdoor and have a shotgun nearby in case someone tries to rob him. Or a person may have a prior felony conviction, say for possession of cocaine, and because of that prior felony not be permitted to own a firearm, but live in a bad neighborhood and therefore have a gun for

personal protection. In each of these examples (and there are countless more), but for the firearm the person would be eligible for and likely receive a probationary sentence. However, because of the gun, and because under the current felony-firearm statute possession of that gun requires a flat 2-year prison sentence, the sentencing judge oftentimes imposes a follow-on prison sentence for the underlying felony as well. This not only is unjust, it is a waste of corrections resources.

Third, amending MCL 750.227b does not mean that prison sentences would no longer be imposed for felony-firearm offenses. Indeed, if the offender did not merely possess the gun as a passive matter, like in the examples above, but actively employed it (e.g. by pointing it at a teller in a bank robbery, or discharging at a clerk in a gas station robbery, or striking one's spouse with it during a felony domestic violence incident), that offender will get extra points under the sentencing guidelines and give the sentencing judge discretion to impose a prison sentence as the sanction. Likewise, HB 4419 would not change the penalties for a person convicted of felony-firearm for the second time. So, the statute does not outlaw prison sentences for felony-firearm; it merely gives the judge more discretion, consistent with the sentencing guidelines, for when to impose it on first-time felony-firearm offenders.

Much has been made recently about a new "get guns off the streets" initiative announced by a Detroit area federal-state task force. It should be noted that even that initiative, which would involve prosecutions under federal law not state law, does not call for mandatory flat sentences for all first time offenders. Rather, it calls for heavy penalties for persons who use a gun when committing a violent crime, or for persons previously convicted of violent felony offenses who are found with a gun. While CDAM has concerns with this initiative in terms of the breadth of its scope, at least it is more narrowly and appropriately tailored to the violent offender. At present, MCL 250.227b paints with far too broad a brush. HB 4419-20 modifies that approach, permitting penalties more appropriately tailored to the individual offender.

CDAM has one suggestion with respect to the language of HB 4419. In the first paragraph, rather than "shall be punished by imprisonment for NOT MORE THAN 3 years," we suggest that the language read "is punishable by imprisonment for NOT MORE THAN 3 years." The "shall be punished by imprisonment" language will lead to arguments over whether probation and/or jail sentences can be imposed. The "is punishable by imprisonment" language is consistent with the language more typically used when probation or jail sentences can be imposed. (See, e.g., the CCW statute, MCL 750.227.)